

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

EUGENE ALBERT FISCHER,

Defendant.

Case No. 87-cr-40070-JPG

**MEMORANDUM AND ORDER**

Pursuant to Federal Rule of Appellate Procedure 22(b)(1), the Court construes defendant Eugene Albert Fischer's ("Fischer") notice of appeal (Doc. 930) as a request for a certificate of appealability. *See Ouska v. Cahill-Masching*, 246 F.3d 1036, 1045 (7th Cir. 2001). Fischer wishes to appeal the Court's dismissal of his Rule 60(b) motion as an unauthorized successive petition under 28 U.S.C. § 2255. A § 2255 petitioner may not proceed on appeal without a certificate of appealability. 28 U.S.C. § 2253(c)(1); *see Ouska*, 246 F.3d at 1045. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Tennard v. Dretke*, 542 U.S. 274, 282 (2004); *Ouska*, 246 F.3d at 1045. To make such a showing, the petitioner must "demonstrate that reasonable jurists could debate whether [the] challenge in [the] habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further." *Ouska*, 246 F.3d at 1046; *accord Tennard*, 542 U.S. at 282; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (certificate of appealability should issue if the petitioner demonstrates "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong.") The Court finds that Fischer has not made such a showing and, accordingly, **DENIES** Fischer's request for a certificate of appealability (Doc. 930).

**IT IS SO ORDERED.**

**DATED: May 31, 2007**

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**